SIKKIM

GOVERNMENT GAZETTE

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 16/LD/2005 Date: 8/10/05

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 7th day of September, 2005 is hereby published for general information .-

THE SIKKIM EDUCATION ACT, 2005
(ACT No. 16 of 2005)
AN
ACT

to provide for better organization, management, development and regulation of schools and other educational institutions in the State of Sikkim.

BE it enacted by the Legislature of Sikkim in the Fifty-sixth Year of the Republic of India as follows : -

CHAPTER – I
Preliminary

Short title, extent, application and commence -ment

1. (1) This Act may be called the Sikkim Education Act, 2005.
(2) It extends to the whole of Sikkim.
(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.
(4) It shall apply to all educational institutions and tutorial institutions in the State except,-
(a) institutions for scientific or technical education financed by the Central Government and declared by Parliament by law to be institutions of national importance;
(b) institutions of higher education which shall be deemed to be University as declared by the Central Government by notification (under section 3 of the University Grants Commission Act, 1956) Central Act No. 3 of 1956

Definitions

2. In this Act, unless the context otherwise requires -

(a) 'academic year' means the year beginning on such date as the State Government may, by notification, specify with respect to any specified area or with respect to any educational institution or class of educational institutions;

(b) "child" means a boy or girl within such age group not being less than six years or more than fourteen years at the beginning of the academic year as the State Government may, specify for the purposes of this Act, either generally or with respect to any specified area;

(c) "competent authority" means any person, officer or authority authorized by the State Government, by notification to perform the functions and discharge the duties of the competent authority under all or any of the provisions of this Act for such area or for such purposes or for such classes of institutions as may be specified in the notification;

(d) "district" means revenue district;

(e) "District Education Officer" means an officer appointed as such to be in charge of the administration of education in a district or part of a district;

(f) "educational institution" means any institution imparting education referred to in section 3 and includes a private educational institution or a tutorial institution but does not include an institution under the direct management of the University or of the Central Government;

(g) "employee" means a person employed in an educational institution;

(h) "Government" means the Government of Sikkim;

(i) "grant" or "grant-in-aid" means any sum of money paid as aid out of the State funds to any educational institution;

(j) "Managing Committee" means the individual or the body of individuals entrusted or charged with the management and administration of a private educational institution and where a society, trust, or an association manages more than one such institution, includes the Managing Committee of each such institution;

(k) "minority educational institution" means a private educational institution of its choice established and administered by a minority whether based on religion or language having the right to do so under clause (1) of article 30 of the Constitution of India;

(l) "parent" in relation to a child includes a guardian and every person who has the lawful custody of the child;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "private educational institution" means any educational institution imparting education referred to in section 3, established and administered or maintained by any person or body of persons but does not include an educational institution,—

i) established and administered or maintained by the Central Government or the State Government or any local authority or any other authority designated or sponsored by the Central Government or the State Government;

(ii) established and administered by any University established by law;

(iii) giving, providing or imparting only religious instruction but not any other instruction; or

(iv) imparting instruction for which there is no approved syllabi or course of studies of Government or University Examination;

(o) "private tuition" means instruction or teaching given by an employee of a recognized educational institution outside its premises to students;

(p) "Public interest" includes public order, public health, public morality and other similar purposes;

(q) "recognised educational institution" means an educational institution recognized under this Act and includes one deemed to be recognized thereunder;

(r) "registering authority" means any person, officer or authority authorized by the State Government by notification, to perform the functions and discharge the duties of the registering authority under all or any of the provisions of this Act for such area or for such purposes or for such classes of institutions as may be specified in the notification;

(s) "tutorial institution" means an unrecognized institution established or run by not less than two persons for systematically imparting education or instruction to five or more persons in any subject with a view to prepare them to appear for an examination in any branch of education to be conducted by any Board or University recognized by the State Government or any body or authority under this Act.

CHAPTER – II
REGULATION OF EDUCATION

Government to Regulate Educational Institutions.

3. (1) The State Government may, subject to sub-section (4) of section 1, regulate education at all levels in accordance with the provisions of this Act.

(2) The State Government may towards that end,-

(a) establish and maintain educational institutions;

(b) permit any private body of persons to establish educational institutions and maintain them according to such specifications as may be prescribed;

(c) require registration of educational institutions including tutorial institutions;

(d) recognize educational institutions;

(e) grant aid to any recognized educational institutions in furtherance of the objects of this Act;

(f) regulate the admission including the minimum or maximum number of persons to be admitted to any course in any educational institution or class of such institutions and the minimum age for such admission;

(g) prescribe the conditions for eligibility of or admission to any educational institution or class of such institutions;

(h) establish hostels or recognize private hostels and frame rules for grant-in-aid to recognized private hostels;

(i) permit or establish institutions imparting education in arts, crafts, music, dance, drama or such other fine arts, physical education including sports;

(j) permit and establish institutions or centres for pre-primary education, adult education and non-formal education; and

(k) take such other steps as they may consider necessary or expedient from time to time.

Prohibition of Private Tuition.

4. On and from the date of commencement of this Act, no institution recognized or deemed to be recognized under this Act, shall permit any of its employees to give private tuition nor shall such employee impart such tuition to any person.

Educational institutions to be in accordance with this Act.

5. Subject to the provision of sub-section (4) of section 1 no educational institution shall be established or maintained otherwise than in accordance with the provisions of this Act or the rules made thereunder.

Government to prescribe curricula, etc.

6. (1) Subject to such rules as may be prescribed, the State Government may in respect of educational institutions, by order specify, -

(a) the curricula, syllabi and text books for any course of instruction;

(b) the duration of such course;

(c) the medium of instruction;

(d) the scheme of examinations and evaluation;

(e) the number of working days and working hours in an academic year;

(f) the rates at which tuition and other fees, building fund or other amount, by whatever name called, may be charged from students or on behalf of students;

(g) the staff pattern (teaching and non-teaching) and the educational and other qualifications for different posts;

(h) the facilities to be provided, such as buildings, sanitary arrangements, playground, furniture, equipment, library, teaching aid, laboratory and workshops;

(i) such other matters as are considered necessary or as may be prescribed.

(2) The curricula under sub-section (1) may also include schemes in respect of -

(a) moral and ethical education;

(b) population education, physical education, health education, environmental education and sports and

(c) such other schemes as may be prescribed.

(3) The prescription under sub-section (1) may be different for different categories of educational institutions.

(4) In every recognized educational institution,—

(a) the course of instruction shall conform to the curricula and other conditions specified under sub-section (1); and

(b) no part of the working hours prescribed shall be utilized for any purpose other than instruction in accordance with the curricula.

CHAPTER – III

DIRECTORATES UNDER THE HUMAN RESOURCE DEVELOPMENT DEPARTMENT

Appointment of Officers.

7. (1) The State Government shall constitute as many Directorates as it deems necessary to deal with the various aspects of education and may appoint a Director for each such Directorate.

(2) The State Government may also appoint such number of officers as may be necessary, designated as Additional Director, Joint Director, Deputy Director, Assistant Directors or otherwise, for each Directorate to assist each such Director in the exercise of the powers conferred on and the performance of the functions entrusted to him by or under this Act.

(3) Subject to the provisions of this Act and the general or special orders of the State Government made in this behalf, the Director appointed under sub-section (1), shall be the Chief Controlling Authority in all matters connected with the administration of such part of education in the State as may be allotted by the State Government by an order in this behalf to the Directorate of which he is the Director.

(4) All persons employed in the administration of this Act shall be subject to the superintendence, direction and control of the State Government and the officer or officers to whom each officer shall be subordinate shall be determined by the State Government.

District Educational Officers and other sub-ordinate officers and staff at the District level.

8. (1) The State Government may appoint for each District one or more District Educational Officers or by whatever name called and every such District Educational Officer shall exercise such powers and perform such functions as may be entrusted to him by or under this Act.

(2) The State Government may sanction the appointment of such number of officers and staff as may be necessary to assist the District Educational Officer.

(3) The appointment to the posts sanctioned under sub-section (2) of section 7 shall be made by such authority and in such manner as may be prescribed.

(4) The powers and functions of the officers and staff appointed under this section shall be such as may be prescribed.

CHAPTER – IV

CLASSIFICATION AND REGISTRATION OF EDUCATIONAL INSTITUTIONS

Classification of educational institutions.

9. The educational institutions shall be classified as follows:-

(1) State institutions, that is to say, educational institutions established or maintained and administered by State Government; and

(2) Private educational institutions, that is to say, educational institutions established or maintained and administered by any person or body of persons registered in the manner prescribed.

Educational institutions to be registered.

10. (1) Save as otherwise provided in this Act, every private educational institution established on or before the date of commencement of this Act or intended to be established thereafter shall, notwithstanding anything contained in any other law for the time being in force, be registered in accordance with this Act and the rules made thereunder.

(2) No person shall establish or as the case may be, run or maintain an educational institution requiring registration under this section, unless such institution is so registered.

Procedure for registration of educational institutions.

11. (1) Any person or registered body of persons intending to__

(a) establish an institution imparting education, or

(b) maintain an institution imparting education established on or before the date of commencement of this Act and in existence on such date, shall make an application for registration of such institution to the registering authority within such period and in such manner alongwith such fee as may be prescribed.

(2) While registering an institution under sub-section (1) of section 11, the registering authority shall have due regard to the following matters, namely:-

(a) that there is need for providing educational facilities to the people in the locality or for the type of education intended to be provided by the institution;

(b) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority;

(c) that the institution is proposed to be located in sanitary and healthy surroundings;

(d) that the site for the building, playground and garden proposed to be provided and the building in which the institution is proposed to be housed conform to the rules in this regard;

(e) that the teaching staff to be appointed shall have necessary qualification as prescribed in this regard by the State Government;

(f) that the application satisfies the requirements laid down by this Act, the rules and the orders made thereunder; and

(g) that the building or of proposed educational institution is provided with sufficient fire safety measures and a certificate to that effect is produced from the Chief Fire Officer of the State Government.

(3) The registering authority shall within a period of three months from the date of receipt of the application,

(a) register the institution and issue a certificate in the prescribed form if the conditions specified or prescribed for registration have been complied with; or

(b) specify or extend from time to time, the period for compliance with such conditions:

Provided that the registering authority may, if it deems necessary, obtain and consider a report on the need for such institution from the District Magistrate of the District where such institution is proposed to be established.

(4) Where any period is specified or extended under clause (b) of sub-section (3), the registering authority may register the institution if the conditions prescribed or specified for registration have been fulfilled within such period and issue a certificate in the prescribed form but shall refuse registration where there has been no such compliance. Every order of refusal shall disclose the grounds for such refusal and shall be in writing and shall be communicated to the concerned applicant.

(5) The Managing Committee of an educational institution registered under this section shall give intimation to the registering authority of any change in any of the particulars furnished under sub-section (1) or of closure of the institution, in such form, in such manner and within such time as may be prescribed and the registering authority shall, on receipt of such intimation, amend the register and the registration certificate wherever necessary or, as the case may be, cancel the certificate of registration.

Upgradation of educational institutions etc.

12. (1) Any person or registered body of persons intending to-

(a) open higher classes in an institution registered under this Act imparting education; or

(b) upgrade any such institution, may make an application to the registering authority for grant of permission therefor within such period and in such form accompanied by such fee as may be prescribed.

(2) Subject to such rules as may be prescribed, the provisions of sub-sections (2) and (3) of section 11 shall, mutatis mutandis, apply to the granting of permission on such application.

(3) Where permission is granted under this section the certificate of registration issued to the institution shall be altered or modified accordingly.

Registration of a recognized educational institution.

13. (1) Notwithstanding anything contained in section 10, the registering authority shall register a private educational institution if such institution has been recognized by the State Government or the authority competent to grant such recognition, as the case may

be, before the date of commencement of this Act in accordance with the rules or orders applicable to such recognition and Managing Committee files a statement in the prescribed form before the registering authority within a period of six months from such date.

(2) No fee shall be payable for the registration of an educational institution under sub-section (1)

(3) Notwithstanding anything in sub-section (1), where the registering authority is of opinion that a private educational institution does not conform to the provisions made by or under this Act, it may direct the Managing Committee of the private educational institution to bring it in conformity with the same within such period or extended period as it may allow.

Cancellation of registration.

14. (1) Where it appears to the registering authority that in respect of any private educational institution,-

(a) any condition for registration prescribed or specified under sub-section (2) of section 11 or the provisions of this Act or the rules made thereunder relating to registration are violated; or

(b) the Managing Committee to which a direction was given under sub-section (3) of section 13 has contravened the direction, it may, after holding such enquiry as it deems fit, send report to the competent authority recommending the cancellation of registration of such institution.

(2) The competent authority may, upon the receipt of the report under sub-section (1) and after giving the Managing Committee an opportunity of being heard, order the cancellation of the certificate of registration of the institution and the removal of its name from the register. Every such order shall be communicated to the Managing Committee and to the registering authority.

Registration of Tutorial Institutions.

15. (1) On or from the commencement of this Act, no tutorial institution shall be started without prior registration and an application for such registration shall be made to the registering authority in the prescribed manner along with such fee as may be prescribed:

Provided that in the case of a tutorial institution in existence at the commencement of this Act, any person or body of persons managing such institution shall, within ninety days from such commencement, make an application for representation to the registering authority and if no such application is so made or if the registering authority communicates to him an order refusing the registration of institution under sub-section (2), the person or body of persons managing such institution shall not run the institution from the date of expiration of ninety days aforesaid or the date of communication of such order of refusal, as the case may be.

(2) On receipt of an application under sub-section (1), the registering authority may, after satisfying itself whether or not the application contains all the prescribed particulars and that the tutorial institution complies with the minimum requirements prescribed with regard to the sanitary condition of the premises and the qualifications of the teaching staff, either register

the tutorial institution in a separate register to be maintained for the purpose or refuse the registration, and shall, where it so registers the institution, issue in the prescribed form a registration certificate in the name of the tutorial institution.

(3) The person or body of persons managing every tutorial institution so registered, shall submit to the registering authority within two months after the end of every academic year, an annual report regarding the coaching facilities provided by it during the academic year.

(4) The persons or body of persons managing every tutorial institutions so registered shall give intimation to the registering authority of any change in any of the particulars furnished under sub-section (2), or of closure of the institution, in such form, in such manner and within such time as may be prescribed, and the registering authority shall, on receipt of such intimation, amend the register referred to in sub-section (2) and the registration certificate wherever necessary, or as the case may be, cancel the certificate and notify the same.

(5) Where the person or body of persons managing any tutorial institution has, in the opinion of the registering authority, contravened any of the conditions subject to which the registration certificate is issued, the registering authority may, after giving the person or body of persons an opportunity of making a representation, cancel the registration certificate and remove the name of the institution from the register referred to in sub-section (2) and notify the same.

CHAPTER – V

RECOGNITION OF EDUCATIONAL INSTITUTIONS, ETC.

Recognition.

16. (1) Recognition may be accorded to any educational institution registered under this Act in accordance with the provisions of this Act and the rules made thereunder.

(2) The granting of recognition shall be subject to fulfilment of the following conditions, namely:-

(a) security deposit of the prescribed amount shall be made within the time specified;

(b) the Managing Committee shall possess or be assured of adequate funds to run the institution on a stable footing; and

(c) such other general or special conditions as may be prescribed in regard to accommodation, appointment of teaching and other staff, the code of conduct to be accepted and observed by the Managing Committee, furniture and equipment, syllabi, text-books and such other matters relating thereto.

(3) Any Managing Committee seeking recognition, as the case may be, for private educational institution shall make an application to the competent authority furnishing such particulars and in such manner and accompanied by such fee as may be prescribed.

(4) The competent authority after satisfying itself that the application is in accordance with the rules, may dispose the application in accordance with sub-sections (6) to (8), or if deemed necessary, forward the application to the District Magistrate for obtaining its report:

(5) The District Magistrate receiving the application forwarded under sub-section (4) shall return it to the competent authority alongwith its report within such time as may prescribed:

Provided that the District Magistrate, while preparing the report under this sub-section may take the help of such persons who have worked for the promotion of Education in the State.

(6) The competent authority, after considering the report, if any, received from the District Magistrate and after holding such inspection or enquiry as it may deem necessary shall, by order, in writing,

(a) grant recognition, where the conditions for recognition applicable to such institutions are fulfilled; or

(b) grant approval provisionally subject to the fulfilment of the conditions for recognition within a period specified or extended from time to time by such authority:

Provided that the educational institution shall not admit any fresh batch of students during the period of such provisional approval.

(7) If a period is specified or extended under clause (b) of sub-section (6), the competent authority may immediately after the expiry of such period, obtain from the District Magistrate, a report and the competent authority, after considering the report, if any, and holding such inspection or enquiry as may be deemed necessary shall, by order in writing, grant recognition where all the conditions for recognition applicable to such institutions are fulfilled or for reasons to be recorded in writing, refuse recognition where such conditions are not fulfilled:

Provided that recognition shall not be so refused unless the applicant is given an opportunity of being heard.

(8) Every order of grant or refusal of recognition passed under this section shall be communicated to the registering authority and to the applicant.

Recognition of existing institution, etc.

17. (1) Notwithstanding anything contained in section 16,-

(a) educational institutions established and run by the State Government or by any authority sponsored by the Central or State Government or by a local authority and approved by the competent authority in accordance with such conditions as may be prescribed shall be deemed to be educational institutions recognized under this Act;

(b) all educational institutions other than those specified in clause (a) imparting education, which are established and recognized in accordance with rules in force immediately before the commencement of this Act and in existence at such commencement shall be deemed to be educational institutions established and recognized under this Act, provided they comply with the provisions of this Act and the rules made thereunder within such period and in accordance with such procedure as may be prescribed.

(2) Any private educational institution imparting education which is in existence at the commencement of this Act but which has not been recognized in accordance with

the rules in force immediately before such commencement shall discontinue to impart education from such commencement unless within sixty days of such commencement, an application for recognition is made, in accordance with the provisions of this Act and the rules made thereunder and every such application shall be disposed of within sixty days of its receipt by the competent authority. No person shall run any such institution after the application for recognition is rejected.

Withdrawal of recognition.

18. (1) Where any Managing Committee of any private educational institution,-

(a) fails to fulfil all or any of the conditions of recognition or fails to comply with the orders of the competent authority in regard to accommodation, equipments, syllabi, text books, appointment, punishment and dismissal of teachers;

(b) denies admission to any citizen on ground of religion, race, caste, language or any of them;

(c) directly or indirectly encourages in the educational institution any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting religion or the religious belief of that class;

(d) employs or continues to employ any teacher whose certificate has been cancelled or suspended by the competent authority after due enquiry or who has been considered by the competent authority after due enquiry to be unfit or undesirable to be a teacher or arbitrarily terminates the services of a teacher or fails to comply with the orders of the competent authority in this regard;

(e) fails to remedy the defects in the instruction or accommodation or deficiencies in the management or discipline within such time as may be specified therefore by the competent authority;

(f) contravenes any of the provisions of this Act the rules and orders made thereunder; the competent authority may, for reasons to be recorded in writing, withdraw the recognition of the institution or take such other action as is deemed necessary, after giving to the Managing Committee an opportunity of making its representation against such withdrawal or action.

(2) Where the State Government is of the opinion that the recognition granted to any private educational institution should, in the public interest be withdrawn, they may, after giving to the Managing Committee of the institution one month's notice to make any representation, withdraw, by notification, the recognition granted to the said institution.

(3) Notwithstanding anything contained in any other law for the time being in force, no educational institution which has not been recognized, or the recognition of which has been withdrawn under this Act shall be entitled to,-

(a) receive any grant-in-aid from the State funds or other financial assistance or other facilities from the Government;

(c) send up or present candidates for examinations in courses of studies conducted by a Board or University or the Government.

CHAPTER – VI

MANAGEMENT OF RECOGNISED PRIVATE EDUCATIONAL INSTITUTIONS

Management of recognized educational institutions.

19. (1) No recognized private educational institutions shall be managed except in conformity with the rules which the State Government may frame for such institutions after previous publication.

(2) The rules under sub-section (1) may, inter alia, include,-

(a) qualification for posts of teaching and non-teaching employees;

(b) the manner of recruitment of the teaching and non-teaching employees;

(c) scales of pay and allowances admissible;

(d) leave, pension, provident fund, insurance and such other benefits;

(e) maintenance and enforcement of discipline of employees;

(f) powers, functions and responsibilities of the management;

(g) duties and responsibilities of the Secretary; and

(h) maintenance and submission of records, accounts and other returns to the prescribed authority.

(3) While recruiting the teaching and non-teaching employees, every recognized educational institution shall comply with the orders issued by the State Government from time to time for reservation of posts to Scheduled Castes, Scheduled Tribes, Most Backward Classes and Other Backward Classes of citizens and the weaker sections of people.

(4) Managing Committee shall have the power to appoint the head of the institution and also to take disciplinary action against him according to the prescribed rules.

(5) If there is a change in the Managing Committee of the institution or change in the location of the institution a fresh application for recognition shall be made as if it were a newly started institution.

Managing Committee

20. (1) Every recognized private educational institution shall have a Managing Committee by whatever name called.

(2) The Managing Committee shall be reconstituted once in two years.

(3) The Managing Committee shall consist of not less than seven and not more than eleven members of whom not less than three including the academic head of the institution and two members of the teaching staff shall be representatives of teachers of the institution and atleast two others shall be representatives of parents selected in accordance with the prescribed rules;

Provided that -

(a) such members of the staff shall be nominated by rotation according to seniority for a period of two years each and

(b) where the institution has less than three members of the teaching staff, all of them shall be representatives of the teachers:

President and Secretary.

21. (1) There shall be a President and Secretary for every Managing Committee appointed from among its members:

Provided that no employee of the private educational institution other than its academic head shall be chosen as the Secretary:

Provided further that every person who, on the date of commencement of this Act, is exercising the powers of the Secretary, shall be deemed to be the Secretary of the institution.

(2) The Secretary shall, subject to the general superintendence and control of the Managing Committee, be the Chief Executive of the institution in all matters pertaining to the private educational institution and all acts done by the Secretary in connection with the affairs of the educational institution shall be binding on the Managing Committee provided that the Managing Committee may within a period of fifteen days from the date of the aforesaid acts of the Secretary, modify or cancel such act.

(3) The Secretary shall be the custodian of all its property and records and shall be responsible for their proper custody, maintenance and safety. He shall exercise such other powers and perform such other duties as may be prescribed.

Removal of the Secretary.

22. Notwithstanding anything contained in section 21, if at any time the competent authority is satisfied that the Secretary is not managing the private educational institution in accordance with the provisions of this Act and the rules, it may direct the Managing Committee to replace the Secretary by another person. The Managing Committee shall be bound to comply with the said direction.

Meetings, etc.

23. (1) The Managing Committee shall hold such number of meetings at such place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at the meetings) as may be prescribed:

Provided that the Managing Committee shall meet atleast once in three months.

(2) The President or in his absence, any member chosen by the members present shall preside at a meeting.

(3) All questions at the meeting shall be decided by a majority of votes of the members present and voting and in the case of equality of votes, the person presiding shall have the right to exercise a second or casting vote.

Powers and functions of the Managing Committee.

24. Subject to the provisions of this Act and the rules prescribed thereunder, the Managing Committee shall have the following powers and functions, namely:-

(a) to carry on the general administration of the private educational institution;

(b) to appoint teachers and other employees of the private educational institutions;

(c) to take disciplinary action against the teachers and other employees except the head of the institution;

(d) to supervise and control the employees of the institution; and

(e) any other matters which may be or required to be prescribed.

CHAPTER – VII

GRANTS-IN-AID

Government to set apart sum for giving grant-in-aid to certain recognized institution.

25. (1) The State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid (hereinafter referred to as grant) to private institutions in the State recognized for this purpose in accordance with rules made in this behalf.

(2) The rules made under sub-section (1) may also require the institution receiving the grant to comply with any provision for the reservation of posts in favour of Scheduled Castes, Scheduled Tribes, Most Backward Classes and any Other Backward Classes subject to such modification, if any which the State Government may make in the application of such provision to any class or classes of such institutions.

Authorities which may sanction grant.

26. (1) The State Government may in such cases as they think fit, by order, sanction grant to any recognized private educational institution subject to such conditions as they may impose in the order relating to such grant.

(2) Every grant sanctioned under sub-section (1) shall be disbursed by the Secretary or the Director or such other officer subordinate to the Secretary or the Director as the State Government may, by general or special order, authorities in this behalf in such manner and subject to such conditions as may be prescribed.

(3) The Managing Committee of every recognized institution which is receiving any grant out of State funds shall be responsible for the fulfilment of all the conditions subject to which such grant has been given.

Money received from sources other than grant.

27. (1) Subject to any law for the time being in force, any money received by way of voluntary donation from donors may be accepted by the institution or the Managing Committee and the fact shall be intimated within ninety days from the date of such acceptance to the competent authority. Such money shall be deposited in the account of the institution in the Nationalised or Scheduled Bank and shall be applied and expended for the improvement of the institution and the development of educational facilities and for such other purposes as may be prescribed.

(2) Subject to any law for the time being in force, no money shall be collected before, during or after admission of any person by any educational institution as a condition precedent to such admission except towards the prescribed fees.

Application for sanction of grant and the conditions to be fulfilled on such sanction.

28. (1) Every application for the sanction of grant shall be made to the State Government, in such form as may be prescribed and shall contain a declaration signed by the Managing Committee of the recognized institution to the effect that the conditions of recognition and of grant are being and shall continue to be fully observed, that all facilities for inspection of that institution, its accounts, registers and other records relating to the grant shall be submitted to the inspecting staff deputed for the purpose and that all the returns and report prescribed in this behalf shall be submitted to the competent authority within the time specified by it.

(2) The State Government may sanction such grant for good and sufficient reasons or refuse to sanction such grant.

(3) Subject to the other provisions of this Act, any order passed by the State Government refusing to sanction the grant shall be final and shall not be questioned in any court of law.

Powers of State Government to withhold, reduce or withdraw grant.

29. (1) Notwithstanding anything contained in this Chapter, the State Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable during the year to an educational institution having regard to the funds at the disposal of the State Government or the conduct and efficiency and the financial condition of such institution, after giving an opportunity to the Managing Committee of the institution concerned of making a representation against such withholding, reduction or withdrawal.

(2) Without prejudice to the generality of the provisions of sub-section (1) or any other provision of this Act, the State Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable to any educational institution if the Managing Committee of the institution concerned,-

(i) fails to fulfil all or any of the conditions of grant;

(ii) denies admission to any citizen on grounds only of religion, race, caste, language or any of them;

(iii) allows any employee of the institution to take part in any agitation intended to bring or attempt to bring into hatred or contempt or intended to excite or attempt to excite disatisfaction towards the Government established by law in India;

(iv) directly or indirectly, encourages any propaganda or practice of wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class;

(v) is guilty of falsification of registers or mis-use of funds for purposes other than those for which they are collected;

(vi) fails to remedy within such reasonable time as specified by the competent authority the defects in the maintenance of accounts pointed out by the auditors; or

(vii) fails to restore, within the time specified by the competent authority, an employee whose services have been wrongfully dispensed with or fails to pay him any arrears of salary or other benefits when directed to do so by the competent authority.

(3) Subject to the other provisions of this Act every order passed under this section shall be final.

Utilisation of funds and movable property of private institutions.

30. (1) All the money received or held by or on behalf of every private institution shall be utilized for the purposes for which they are intended and shall be accounted for by the Managing Committee in such manner as may be prescribed.

(2) All the money received or held by or on behalf of every private institution shall be deposited in a Bank.

(3) The surplus fund of every such institution shall be invested in such manner as may be prescribed and shall be utilized towards educational development only.

Explanation.- For the purpose of this section "surplus fund"

means all the money that remains unused with the institution at the beginning of each academic year, after providing for all the objects, needs, requirements or improvements of the institution during the previous three academic years.

CHAPTER – VIII

ACCOUNTS, AUDIT, INSPECTION AND RETURNS

Accounts

31. Every educational institution receiving grants out of State funds and other sources shall maintain accounts in such manner and containing such particulars as may be prescribed.

Annual audit of accounts.

32. (1) The accounts of every educational institution receiving grants out of State funds shall be audited at the end of every academic year in such manner, after following such procedure and by such authority, officer or person as may be prescribed and different authorities, officers or persons may be prescribed for different classes of educational institutions.

(2) (a) The prescribed authority, officer or person shall have full access to the account books and other documents required to be maintained by the educational institution in respect of grants received by it out of State funds and shall send a copy of the report on the audit of the accounts under sub-section (1) to the competent authority and the Managing Committee.

Inspection or inquiry etc.

33. (1) The State Government or the competent authority may suo moto or otherwise cause an inspection of or inquiry in respect of any educational institution, its accounts, its buildings, laboratories, libraries, workshops and equipments and also of the examinations, teaching and other work conducted or done by the institution to be made by such person or persons as it may direct or to cause an inquiry to be held in respect of examination, working and financial condition of such institution or of any other matter connected with the institution in accordance with such rules as may be prescribed.

(2) The Managing Committee and the employees of the educational institution shall, at all reasonable times, be bound to afford to the aforesaid officer all such assistance and facilities as may be required for the purpose of such inspection or inquiry.

(3) The officer empowered under sub-section (1) shall have the following powers, namely:-

(a) he shall, at all reasonable times, have access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the Managing Committee and may summon any person in possession or responsible for the custody of such books, accounts, documents, securities, cash or other properties to produce the same at any place as he may direct;

(b) he may summon any person who, he has reason to believe has any knowledge as to the affairs of the educational institution to appear before him and may examine such person on oath.

(4) The State Government or the competent authority shall communicate to the Managing Committee the views of such authority with reference to the result of such inspection or

inquiry and may, after ascertaining the opinion of the Managing Committee thereon, advise that Committee upon the action to be taken.

(5) The Managing Committee shall report to the State Government or the competent authority, as the case may be, the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry. Such report shall be furnished within such time as the State Government or the competent authority may direct.

(6) Where the Managing Committee does not, within a reasonable time, take action to the satisfaction of the State Government or the competent authority, they may, after considering any explanation furnished or representation made by the Managing Committee, issue such directions as may deem fit, and the Managing Committee and the head of the institution shall comply with such directions and shall be responsible for the implementation of every such direction.

Furnishing of returns etc.

34. Every Managing Committee shall, within such time or within such extended time, as may be fixed by the competent authority in this behalf, furnish to the competent authority such returns, statistics and other information as the competent authority may from time to time, require.

Restriction on alienation of property of aided school.

35. (1) Notwithstanding anything to the contrary contained in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of an aided school shall be created or made except with the previous permission in writing of the Secretary to the Government in the Human Resource Development Department. The Secretary shall grant such permission applied for unless the grant of such permission will, in his opinion adversely affect the working of the school.

(2) Any person aggrieved by an order of the Secretary refusing or granting permission under sub-section (1) may in such manner and within such time as may be prescribed, appeal to the Government.

(3) Any transaction made in contravention of sub-section (1) or sub-section (2) shall be null and void.

(4) If any educational agency or the manger of any school acts in contravention of sub-section (1) or of an order passed under sub-section (2) Government may withhold any grant to the school.

CHAPTER – IX

TAKING OVER OF MANAGEMENT, REQUISITIONING AND ACQUISITION OF EDUCATIONAL INSTITUTIONS.

Taking over of management of educational institutions in public interest.

36. (1) Where the State Government is of opinion that the management of any educational institution should either in the public interest or in order to secure the proper management of the said educational institution be taken over, it may, after giving one month's notice to the person or body of persons incharge of the management of such educational institution to make any representation, direct by notification, that the management of the said educational institution shall with effect from the date specified therein vest in the state Government for a period of one year:

Provided that no private educational institution under the management of a Religious Institution, Endowment or a Wakf shall be taken over without the prior consent of such management:

Provided further that if the State Government is of the opinion that in order to secure the proper management of the educational institution, it is expedient that such management should continue to vest in the State Government after the expiry of the said period of one year, it may issue direction for the continuance of such management for a further period not exceeding one year as it may think fit, so however, the total period for which such management shall continue to vest in the State Government shall not, in any case, exceed two years.

(2) The educational institution referred to in sub-section (1) shall be deemed to include all assets, rights and lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, stores instruments and vehicles, cash balances, revenue fund, investments and book debts and all other rights and interests arising out of such property as were immediately before the date of taking over of the management under sub-section (1) (hereinafter in this Chapter referred to as the date aforesaid) in the ownership, possession, power or control of the management of such educational institution and all books of account, registers and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied or other arrangement (not being a contract) or agreement in so far as it relates to the management of the educational institution and in force immediately before the taking over, shall be deemed to have terminated on the date aforesaid.

(4) All persons, in whom the management of the educational institution vested immediately before the taking over shall, as from the date aforesaid, cease to be so vested and shall be deemed to have vacated their offices as such on the date aforesaid.

(5) Notwithstanding anything in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3) or who ceases to hold any office by reason of the provisions contained in sub-section (4) shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the cessation of management or for the loss of office, as the case may be.

(6) Notwithstanding any judgment, decree or order of any court, tribunal or other authority or anything contained in any other law for the time being in force, every person in whose possession or custody or under whose control the educational institution or any part thereof or any properties attached thereto is vested shall transfer the same to the special officer appointed by the State Government for the purpose of carrying on the management of such educational institution for and on behalf of the State Government, or where no special officer is appointed, to such other person as the State Government may direct.

(7) For the removal of any doubt, it is hereby declared that any liability incurred by the private management in relation to the educational institution before the taking over shall be enforceable against the said Managing Committee and not against State Government or the Special Officer.

(8) The amount payable to the Managing Committee in respect of the vesting in the State Government of an educational institution under sub-section (1) shall be an amount equal to the average net annual surplus income of such educational institution during the period of its existence, or the period of five consecutive accounting years immediately preceding the date of such vesting whichever is less :

Provided that no such amount shall be payable if the trust or the Managing Committee under which the educational institution is founded makes provision for the running of such institution.

Explanation.- In this sub-section, the expression "accounting year" means the period beginning on the 1st day of July of any year and ending on the 30th day of June of the year next following.

(9) The amount payable under sub-section (8) shall subject to rules made under this Act, be paid by the competent authority to the person interested in the educational institution in such manner and within such time as may be prescribed.

Relinquishment of management of educational institutions.

37. (1) After the expiry of the period specified in sub-section (1) of section 36, the management of educational institution shall vest in accordance with the order, if any, of any court and if there be no such order, vest in the Managing Committee of such educational institution or such other body or person, as the case may be, entitled thereto.

(2) If at any time before the expiry of the period referred to in sub-section (1) of section 36, it appears to the State Government that the purpose of vesting of the management of educational institution in the State Government has been fulfilled or that for any other reason it is not necessary that the management of such educational institution should remain vested in the State Government, it may, by order published in the Official Gazette, relinquish the management of such educational institution with effect from such date as may be specified in the order.

(3) On and from the date specified under sub-section (1) the management of the educational institution shall be transferred in accordance with the order, if any, of any Court, and if there is no such order, shall be transferred to the Managing Committee (by whatever name called) of the educational institution or such other body or person, as the case may be, entitled thereto.

CHAPTER – X

TERMS AND CONDITIONS OF SERVICE OF EMPLOYEES IN PRIVATE EDUCATIONAL INSTITUTIONS.

Qualifications, conditions of service of employees.

38. The State Government may, after previous publication, make rules regulating the recruitment and conditions of service (including rights as regards disciplinary matters) of the employees in recognized private educational institutions :

Provided that the minimum qualification for recruitment, age of recruitment, and retirement and benefits of retirement for employees in educational institutions receiving grant in aid from the State Government shall be the same as those applicable for the corresponding category of employees, if any, in State Institutions unless otherwise prescribed.

Appointment of employees.

39. No person who does not possess the requisite qualification prescribed under section 38 shall, on and from the date of commencement of this Act, be appointed as an employee in a recognized private educational institution.

Schedule of employment to be maintained.

40. (1) Every private educational institution shall maintain a Schedule of employees indicating therein the number of persons in its employment, the name and qualification of each employee, the grade of pay and such other particulars as may be prescribed.

(2) Within three months from the date of commencement of this Act and within a like period after any alteration in such Schedule is made, a private educational institution shall submit a copy of the Schedule or alterations made therein, as the case may be, to the Director of the Department concerned or such other officer as may be notified for this purpose.

(3) The Schedule of appointments for the time being in force shall be kept at the office of the private educational institutions and shall during office hours, be open free of charge to inspection by any employee of that private educational institution. The names and qualifications of the teaching staff shall be displayed in a prominent place in the institution.

Code of Conduct.

41. (1) Every employee of a private educational institution shall be governed by the prescribed Code of Conduct and if he violates any provision thereof he shall be liable for the disciplinary action under this Act.

(2) The Managing Committee may, with prior approval of the State Government or any authority authorized in this behalf by the State Government also prescribe standards of conduct to be observed by employees; provided they are not inconsistent with those prescribed under sub-section (1).

Dismissal, removal etc.

42. (1) Subject to such rules as may be made in this behalf no teacher or other employee of a private educational institution shall be dismissed, removed or reduced in rank except, -

(a) in accordance with the conditions of service governing him;

(b) after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the said charges, and where it is proposed after such inquiry to impose on him such penalty, it may impose such penalty on the basis of the evidence adduced during such inquiry:

Provided that this sub-section shall not apply to temporary employees or to the dismissal, removal or reduction in rank of a teacher or other employee on the ground of misconduct which has led to his conviction on a criminal charge involving moral turpitude.

(2) No order imposing any penalty other than those referred to in sub-section (1) shall be passed except after-

(a) the teacher or employee is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation which he may wish to make; and

(b) such representation, if any, is taken into consideration.

(3) A teacher or other employee may be placed under suspension by the Managing Committee where -

(i) disciplinary proceeding against him is contemplated or is pending; or

(ii) a case against him in respect of any criminal offence is under investigation or trial.

(4) No such suspension shall remain in force for more than six months :

Provided that if the enquiry is not completed within the period of six months, the Secretary shall report the matter to the competent authority, who may permit extension of the period of suspension beyond six months, if he is satisfied that the enquiry could not be so completed due to circumstances beyond the control of the Managing Committee.

(5) The Managing Committee placing an employee under suspension shall forthwith report to the competent authority the circumstances in which the order was made.

(6) Subject to such rules as may be prescribed, every employee placed under suspension under this section shall be entitled to such subsistence allowance as may be prescribed.

Communication of Order.

43. (1) Every order of the Managing Committee imposing any penalty or otherwise affecting the conditions of service of an employee to his prejudice, shall be communicated to the employee in the prescribed manner.

(2) No order which has not been communicated in accordance with sub-section (1) shall be valid or be of any effect whatsoever.

Appeals

44. (1) Any teacher or other employee of a private educational institution who is dismissed, removed or reduced in rank may within three months from the date of communication of the order prefer an appeal to the Tribunal.

(2) The provisions of sections 4 and 5 of the Limitation Act, 1963 shall be applicable to such an appeal.

(3) The Tribunal shall dispose of the appeal filed under sub-section (1) after giving the parties the opportunity of being heard.

(4) In respect of an order imposing a penalty other than those specified in sub-section (1) of section 42 on any teacher or other employee, an appeal shall lie to the competent authority within three months from the date of communication of the order imposing such penalty.

(5) The competent authority shall dispose of an appeal preferred under sub-section (4) after giving the parties the opportunity of being heard.

(6) An appeal against an order of the competent authority under sub-section (5) shall lie within the prescribed period to the Tribunal, whose decision shall be final.

Tribunal

45. (1) The State Government shall, by notification in the Official Gazette constitute one Educational Appellate Tribunal for the adjudication of appeals preferred under this Act.

(2) The Educational Appellate Tribunal shall consist of one person who is or has been a Judicial Officer not below the rank of a District Judge:

Provided that pending constitution of the Educational Appellate Tribunal under sub-section (1), the District Judge of each District shall function as the Educational Appellate Tribunal of the District.

(3) The Educational Appellate Tribunal, may, -

(a) if satisfied from the material on record that the order is arbitrary, perverse, malafide, violative of the rules of natural justice or not sustainable on any other ground, pass such orders including one for the reinstatement of the employee, as it deems fit on such terms and conditions, if any, including payment of salary allowances and costs; 5 of 1908

(b) shall for the purposes of the disposal of the appeals referred under this Act have the same powers as are vested in a court of appeal under the Code of Civil Procedure, 1908;

(c) shall have the power to stay the operation of the order appealed against on such terms as it may think fit;

(d) shall for the purpose of executing its own orders have the same powers as are vested in a court executing a decree of a Civil Court under the Code of Civil Procedure, 1908 as if such orders were decrees of a Civil Court.

(2) All expenses incurred in connection with the Tribunal shall be borne from and out of the Consolidated Fund of the State.

(3) No Civil Court shall have jurisdiction in respect of matters over which the Tribunal exercises any power under this Act.

Resignation.

46. (1) Any employee of a private educational institution may resign his service by giving a notice to the Managing Committee in accordance with the terms and conditions of service governing such employee.

Retrenchment of employees.

47. (1) Where retrenchment of any employee is rendered necessary by the Managing Committee consequent on any change relating to education or course of instruction or due to any other reason, such retrenchment may be effected with the prior approval of the competent authority or the next higher authority, as the case may be.

Employee whose service is terminated to be compensated.

48. An employee of a private educational institution who has been confirmed and whose services are retrenched or terminated by the Managing Committee for reasons other than as a measure of punishment shall be entitled to compensation at the rate of fifteen days salary for every completed year of service subject to minimum of three months salary and maximum of fifteen months salary.

Overriding effect of this Chapter.

49. The provisions of this Chapter shall have effect notwithstanding anything in -

(i) any law for the time being in force, or

(ii) any award, agreement or contract of service made before or after the date of commencement of this Act, or

(iii) any judgment, decree or order of a Court, Tribunal or any other authority :

Provided that where under any such law, award, agreement, contract of service, judgment, decree or order or otherwise, any employee is entitled to benefits more favourable than that accorded under this Chapter, such teacher or other employee shall continue to be entitled to such benefits :

Power of Government to impose penalties.

50. Notwithstanding anything contained in sections 42 and 44 and subject to such rules as may be prescribed, where the competent authority is of the opinion that disciplinary action against an employee is necessary, it may direct the Managing Committee to take action within a specified period. If the Managing Committee fails to comply with the direction, the competent authority shall report the matter to the State Government, which after considering the report may specify by order, a person or authority to take disciplinary action against the employee. The person or authority so specified may thereupon take disciplinary action against the employee and impose all or any of the penalties which the Government can impose. An appeal shall lie from a decision of such person or authority to the Tribunal, within the prescribed period.

CHAPTER – XI

CONTROL OF PRIVATE EDUCATIONAL INSTITUTION

Code of Conduct for Managing Committee.

51. The Managing Committee of private educational institutions shall be governed by such Code of Conduct as the State Government may, after previous publication, prescribe.

Furnishing of list of properties.

52. (1) Every private educational institution shall, maintain a list of the properties, both moveable and immoveable owned or possessed by it.

(2) The management shall, on or before the prescribed date, furnish to the competent authority a copy of such list in the manner and form as may be prescribed.

Utilisation of Funds, etc.

53. (1) All the money collected, grants received and all property held by the management on behalf of a private educational institution shall be utilized for the prescribed purposes and the purposes for which they are intended and shall be accounted for by the private educational institution in such manner as may be prescribed.

(2) The funds of the private educational institution shall be deposited by it in such manner as may be prescribed.

(3) The Managing Committee shall, within a time which the competent authority may fix, reimburse to the account of the private educational institution any money which it has failed to account for under sub-section (1). If the money is not so reimbursed within the time so fixed, the competent authority shall recover the same from the Managing Committee as arrears of land revenue and credit it to the account of the institution.

Private institution not to be closed

54. (1) Save as otherwise provided in this Act, no private educational institution shall be closed down or discontinued unless a notice of not less than one academic year and

down, etc., without sufficient notice.

indicating the intention to do so, has been given by the Managing Committee to the competent authority in this behalf.

(2) On the closure of a recognized private educational institution, all its properties relatable to the grant-in-aid given by the State Government as may be determined by the competent authority shall vest in the State Government.

Managing Committee to handover properties, records, etc., of private educational institution.

55. (1) In the event of the private educational institution being closed down or discontinued or its recognition being withdrawn, the Managing Committee shall hand over or cause to be handed over to the competent authority the custody of all the properties, records and accounts of the institution in its possession.

(2) (a) Where the competent authority is resisted in or prevented from obtaining the custody of properties, records or accounts of the institution by such management, any Judicial Magistrate of the First Class having jurisdiction shall, on an application made by the competent authority, by order, after notice to the Managing Committee, direct the handing over of the custody of such properties, records or accounts of the institution to the competent authority within the time specified in such order.

(b) Where the Managing Committee fails to handover the custody of the properties, records or accounts within the time specified in the order of the Magistrate under clause (a), it shall be punished with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both and the Magistrate shall cause the custody of the properties, records or accounts to be handed over to the competent authority taking such police assistance as may be necessary.

(3) Nothing in this section shall apply to a private educational institution under the Management of a charitable or religious institution, charitable or religious endowment or wakf.

Restriction on alienation of property of private educational institution.

56. (1) Notwithstanding anything in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of a private educational institution shall be made or created except with the previous permission in writing of the competent authority on an application made in this behalf.

(2) No permission applied for under sub-section (1) shall be refused by the competent authority except where the grant of such permission will, in its opinion, adversely affects the working of the institution.

(3) The competent authority shall pass an order either granting or refusing permission applied for, within a period of sixty days from the date of receipt of the application.

(4) Any person aggrieved by an order refusing permission under sub-section (2) may, in such manner and within such time, as may be prescribed, appeal to the prescribed authority.

(5) Any transaction made in contravention of sub-section (1) shall be null and void.

Liability of Secretary to repay

57. Where any Secretary incurs debt for the purpose of running an educational institution without proper authorization by the Managing Committee of such institution and where it is

debts incurred in certain cases.

found by the competent authority after making an enquiry that the money received through such debts have not been utilized for running the institution, it shall be the personal liability of such Secretary to discharge the said debts.

CHAPTER – XII

PENALTIES

Penalty for establishing unregistered educational institutions etc.

58. Any person, who, establishes or as the case may be, maintains or runs an educational institution in contravention of section 10 or after registration is refused for such institution under section 11 or cancelled under section 14, shall, on conviction, be punished with imprisonment for a term which may extend to three years but shall not be less than six months and with fine which may extend to five thousand rupees but not less than one thousand rupees.

Penalty for maintaining or running unregistered tutorial institutions.

59. (1) Any person who maintains or runs a tutorial institution in contravention of the proviso to sub-section (1) of section 15 or who establishes and maintains a tutorial institution without obtaining the registration certificate under sub-section (2) of the said section or who after the cancellation of the registration certificate issued to him under that sub-section continues to run such an institution, shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees:

Provided that for a second or any subsequent conviction under this section, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

Penalty for collecting money in contravention of section 27.

60. Where any educational institution is found to be collecting money in contravention of the provisions of sub-section (2) of section 27, every person , who at the time of such collection was incharge of, and was responsible to the institution for its management shall, on conviction, be punished with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees. On such conviction, the institution shall refund the money so collected to the person from whom it was collected.

Penalty for failure to give notice of closure of institutions.

61. If the Managing Committee of any private educational institution fails to give the notice required under sub-section (1) of section 54 every member thereof shall, on conviction, be punished with simple imprisonment which may extend to two months or with fine which may extend to one thousand rupees or with both and with fine of fifty rupees for every day's default.

Offences by Companies.

62. (1) Where an offence against any of the provisions of this Act or any rule made thereunder has been committed by a company, every person who, at the time the offence was committed, was in-charge of and was responsible to the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of the director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

(a) a company, means any body corporate and includes a trust, a firm, a society or other association of individuals; and
(b) the director in relation to,-
  (i) a firm, means a partner in the firm,
  (ii) a society, a trust or other association of the individuals, means the person who is entrusted under the rules of the society, trust or other association with management of the affairs of the society, trust or other association, as the case may be.

CHAPTER – XIII

MISCELLANEOUS

Appeals

63. Save as otherwise provided in this Act, any person or Managing Committee, aggrieved by an order passed by an officer or authority under this Act may, within the prescribed period, prefer an appeal to the prescribed authority.

Revision by the State Government.

64. (1) The State Government may either suo moto or on an application from any person interested call for and examine the record of an educational institution or of any authority, officer or person in respect of any administrative or quasi-judicial decision or order, not being a proceeding in respect of which a reference to an arbitrator or an appeal to the High Court is preferred, to satisfy themselves as to the regularity, correctness, legality or propriety of any decision or order passed therein, and if, in any case it appears to the State Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass order accordingly:

Provided that the State Government shall not pass any order adversely affecting any party unless such party has had an opportunity of making a representation.

(2) The State Government may stay the execution of any such decision or order pending the exercise of powers under sub-section (1) in respect thereof.

(3) Every application preferred under sub-section (1) shall be made within such time and in such manner and accompanied by such fees as may be prescribed.

Review.

65. (1) The State Government may, suo motu, at any time or on an application received from any person interested within ninety days of the passing of any order under the provisions of this Act review any such order, if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact.

(2) The provisions contained in the proviso to sub-section (1) and in sub-sections (2) and (3) of section 64 shall, so far may be, apply in respect of any proceeding under this section as they apply to a proceeding under sub-section (1) of that section.

Powers of Government to give directions.

66. (1) The State Government may, subject to other provisions of this Act, by order, direct the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Managing Committee or the owner, as the case may be, of such institution shall comply with every such direction.

(3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act and it shall be the duty of such officer or authority to comply with such directions.

Power to enter and inspect.

67. (1) Every officer not below such rank as may be prescribed, shall subject to such conditions as may be prescribed, be competent to enter at any time during the normal working hours of an educational or tutorial institution, any premises of any such institution within the jurisdiction and to inspect any record, register or other documents or any movable or immovable property relating to such institution for the purpose of exercising his powers and performing his functions under this Act.

(2) Any officer authorized by the State Government in this behalf, may at any time during the normal working hours of any educational institution enter such institution or any premises thereof or any premises belonging to the Managing Committee of such institution if he has reason to believe that there is or has been any contravention of the provisions of this Act and search and inspect any record, accounts, register or other document belonging to such institution or of the Managing Committee, in so far as any such record, accounts, register or other document relates to such institution and seize any such records, accounts register or other documents for the purpose of ascertaining whether there is or has been any such contravention.

(3) In order to secure proper and effective utilization of the finances or resources or other assets of any educational institution in existence at the commencement of this Act it shall be competent for the State Government to invoke the provisions of sub-section (2) and ascertain such finances, resources and assets of any institution and after such ascertainment to give such directions to the Managing Committee as they deem fit.

(4) The provisions of Criminal Procedure Code, 1973 relating to searches and seizure shall apply, so far as may be to searches and seizures under sub-section (2). 2 of 1974

Penalty for obstructing officer or other person exercising powers under this Act.

68. Any person who obstructs an officer of the State Government in the exercise of any power conferred on him or in the performance of any function entrusted to him by or under this act or any other person lawfully assisting such officer in the exercise of such power or in the performance of such function or who fails to comply with any lawful direction made by such officer or person shall be punished with fine which may extend to two hundred and fifty rupees.

Protection of action taken in good faith.

69. No suit, prosecution or other legal proceeding shall lie against the State Government or any authority, officer or servant of the State Government for anything in good faith done or intended to be done under this Act or the rules made thereunder.

Investigation and cognizance of offences.

70. No court shall take cognizance of any offence punishable under this Act or the abetment of any such office, save on complaint made by the competent authority or with the previous sanction of such authority.

Punishment for abatement of offences.

71. Whoever instigates or abets the commission of any offence punishable under this Act shall, on conviction, be punished with the punishment provided for the offence.

Enquiry and Proceedings.

72. All proceedings or enquiries before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 288 of the Indian Penal Code, 1860 45 of 1860

Non-application of the Act to certain institutions.

73. Nothing in this Act or the rules made thereunder shall apply to any minority educational institution to the extent they are inconsistent with the rights guaranteed under article 30 of the Constitution of India.

Removal of difficulties.

74. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, make such provisions not inconsistent with the said provisions as appear to them to be necessary or expedient to remove the difficulty. 2 of 1974

Delegation.

75. The State Government may, by notification in the Official Gazette, delegate all or any powers exercisable by it under this Act or rules made thereunder in relation to such matter and subject to such conditions, if any, as may be specified

in the direction to be exercised also by such officer or authority subordinate to the State Government as may be specified in the notification.

Power to make rules.

76. (1) The State Government may, by notification published in the Official Gazetteer and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for -

(i) the classes or standards of education and upto which shall be considered as primary education;

(ii) the curricula, etc. specified under sub-section (1) of section 6;

(iii) the authorities and the manner in which appointments are to be made to the posts sanctioned under sub-section (2) of section 9 and the powers and functions of the officers and staff;

(iv) the declaration as to what constitutes secondary or higher secondary education, technical education, special education, school places, school-age and attendance in schools or other institutions;

(v) the establishment or maintenance and administration of educational institutions;

(vi) the grant of registration or recognition to educational institutions and the conditions therefor;

(vii) the period and the manner for applying for registration of institutions;

(viii) the form of the register maintained for registration of educational institutions and tutorial institutions and of the registration certificate;

(ix) the manner of submission of the report of the District Magistrate;

(x) the conditions for recognition of existing institutions and the procedure therefore;

(xi) the manner in which accounts, registers, records and other documents shall be maintained in the educational institutions and the authority responsible for such maintenance;

(xii) the submission of returns, statements, reports and accounts by managements or owners of properties of educational or tutorial institutions;

(xiii) the inspection of educational and tutorial institutions and the officers by whom inspection shall be made;

(xiv) the mode of keeping and the auditing of accounts of such institutions;

(xv) the standards of education and courses of study in educational institutions;

(xvi) the grant of sums by the State Government to educational institutions towards providing scholarships, bursaries, fee concessions and the like;

(xvii) the preparation and submission of development plan for educational institutions in general and for technical education and the contents of such plans;

(xviii) the powers and the functions of the officers and other sub-ordinate staff of the Education Department;

(xix) the preparation and sanction of building plans and estimates of the educational institutions and the requirements to be fulfilled by the buildings for the educational institutions maintained by the local authorities and private institutions;

(xx) the purpose for which the premises of the educational institutions may be used andthe restrictions and conditions subject to which such premises may be used for any other purpose;

(xxi) the regulation of the use of text books, maps, plans, instruments and other laboratory and sports equipment in the institution.

(xxii) the regulations for admission into educational institutions of pupils for the academic course, private study and other special courses and the attendance thereat;

(xxiii) the manner of conducting the class and terminal examination and promotion of pupils to higher classes;

(xxiv) the donations or contributions and the conditions subject to which they may be accepted by the educational institutions from the public and the naming of institutions.

(xxv) the conditions for co-education in the educational institutions and the regulation of the conduct and discipline of pupils and the penalty for misconduct or indiscipline;

(xxvi) the manner of services of notices, orders and other proceedings, of presenting appeals or applications for revision or review and the procedure for dealing with them and the fee in respect thereof;

(xxvii) the scale of fees or charges or the manner of fixing fees or charges payable in respect of any certificate, permission, marks lists or other document for which such fees may be collected;

(xxviii) elections to the Student Associations or Unions;

(xxix) all matters expressly required or allowed by this Act to be prescribed or in respect of which this Act makes no provision or makes insufficient provision and a provision is, in the opinion of the State Government, necessary for the proper implementation of this Act;

(3) Every rule made under this Act, shall, immediately after it is made be laid before the State Legislature if it is in session and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following, the House agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and Saving

77. (1) The Sikkim Education Act, 2002 is hereby repealed.

(2) On and from the date of commencement of this Act, all rules notifications and orders including the Sikkim Trade License and Miscellaneous Provisions Rules, 1985 so far as it relates to issue of Trade license to Private Educational Institutions shall stand repealed. 11 of 2002

(2) Notwithstanding such repeal, all actions taken under such rules, orders and notifications before such commencement shall be deemed to have been taken under the corresponding provisions of this Act.

By Order

R.K. PURKAYASTHA (SSJS)
LEGAL REMEMBRANCER-CUM-SECRETARY,
LAW DEPARTMENT.
File No. 16 (82)/LD/2005